

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FREDERICK BANKS, ET AL.

§

VS.

§

CIVIL ACTION NO. 1:15cv37

NEW YORK POLICE DEP'T, ET AL.

§

MEMORANDUM OPINION REGARDING VENUE

Plaintiffs Frederick Banks and Kenneth Posner, proceeding *pro se*, brings this civil rights action pursuant to 42 U.S.C. § 1983 against the New York Police Department and others.<sup>1</sup>

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Plaintiffs filed this lawsuit complaining of the conditions of their confinement at the Renewal Center in Pittsburgh, Pennsylvania.

The Civil Rights Act, 42 U.S.C. §1981, *et seq.*, under which this case is brought, does not contain a specific venue provision. Accordingly, venue in civil rights cases is controlled by 28 U.S.C. § 1391. *Jones v. Bailey*, 58 F.R.D. 453 (N.D. Ga. 1972), *aff'd per curiam*, 480 F.2d 805 (5th Cir. 1973).

When, as in this case, jurisdiction is not founded solely on diversity of citizenship, 28 U.S.C. § 1391 provides that venue is proper only in the judicial district where the defendants reside or in

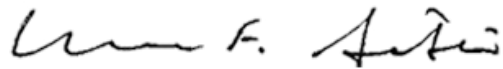
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<sup>1</sup> Plaintiffs filed this action as an "Indictment and Petition for Writ of Mandamus Complaint." Liberally interpreted, the plaintiffs' pleading is construed as a complaint brought pursuant to 42 U.S.C. § 1983.

which the claims arose. Plaintiff's claims arose at the Renewal Center in Pittsburgh, Pennsylvania. Pursuant to 28 U.S.C. § 118, Pittsburgh is located in the Western District of Pennsylvania. Accordingly, venue in the Eastern District of Texas is not proper.

When venue is not proper, the court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). This case should be transferred to the Western District of Pennsylvania. An appropriate order so providing will be entered by the undersigned.

**SIGNED** this 12 day of February, 2015.

A handwritten signature in black ink, appearing to read "Keith F. Giblin", written over a horizontal line.

KEITH F. GIBLIN  
UNITED STATES MAGISTRATE JUDGE